

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES GARY HAMILTON, et al.,

Plaintiffs,

vs.

US BANK, N.A., et al.,

Defendants.

CASE NO. 11CV977 DMS (RBB)

ORDER (1) DENYING WITHOUT PREJUDICE MOTION TO DISMISS FILED BY DEFENDANTS RANDALL D. NAIMAN AND NAIMAN LAW GROUP, PC; AND (2) GRANTING DEFENDANT U.S. BANK N.A.'S MOTION TO SET ASIDE DEFAULT

In this mortgage foreclosure action, Defendants Randall D. Naiman and Naiman Law Group (collectively “Naiman”) filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), strike pursuant to California Code of Civil Procedure Section 425.16(a), or alternatively for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e). The motion is set on this court’s calendar for September 9, 2011. Defendant U.S. Bank N.A. (“U.S. Bank”) filed a motion to set aside entry of default, which is set on this court’s calendar for September 16, 2011. For the reasons which follow, Naiman’s motion is **DENIED WITHOUT PREJUDICE**, and U.S. Bank’s motion is **GRANTED**.

On August 8, 2011, the court issued an order granting with leave to amend Defendant JPMorgan Chase Bank, N.A.’s motion to dismiss the complaint. (*See* docket no. 42 (“August 8 Order”)). On August 19, 2011 Plaintiffs timely filed their first amended complaint. An amended

1 complaint supersedes a prior complaint as a pleading. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474
2 (9th Cir. 1997), aff'd on other grounds, *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). Accordingly,
3 Naiman's motion is **DENIED** as moot. This order is **WITHOUT PREJUDICE** to Naiman filing,
4 as appropriate, a motion to dismiss, strike or for a more definite pleading with respect to the first
5 amended complaint.

6 The August 8 Order also denied Plaintiffs' motion for default judgment against U.S. Bank,
7 among other things. (*See* docket no. 42 at 4.) For the reasons stated therein, U.S. Bank's motion to
8 set aside the entry of default is **GRANTED**.

9 For the foregoing reasons, it is hereby **ORDERED** as follows:

10 1. The motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), strike pursuant
11 to California Code of Civil Procedure Section 425.16(a), or alternatively for a more definite statement
12 pursuant to Federal Rule of Civil Procedure 12(e) filed by Defendants Randall D. Naiman and Naiman
13 Law Group is **DENIED WITHOUT PREJUDICE**.

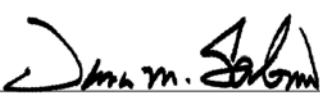
14 2. Defendants shall file a response to the amended complaint, if any, within the time provided
15 in Federal Rule of Civil Procedure 15(a)(3).

16 3. The motion to set aside entry of default filed by Defendant U.S. Bank N.A. is **GRANTED**.

17 4. The hearings set for these matters on September 9 and 16, 2011, respectively, are hereby
18 **VACATED**.

19 **IT IS SO ORDERED.**

21 DATED: August 23, 2011

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23 HON. DANA M. SABRAW
24 United States District Judge

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